present case, after the amendment, the issue, namely, was the rent in arrears for 14 days, will be the same.

Although it would appear to me incredibly careless to allow a mistake of this nature to appear in both the notice to quit and the Statement of Claim, and even more incredible that there was no application to amend on the filing of the Statement of Defence, it is, in so far as the pleadings are concerned, not alleged that the mistake was made *mala fide*, and the defendant can be compensated by the terms upon which the Court allows the amendment.

In the circumstances therefore the plaintiff must be given leave to amend the Statement of Claim by deleting the words in brackets in paragraph 2, namely, "payable in arrear".

It seems to me that the plaintiff has brought all this on himself, nor did he take any steps to amend when he received the Statement of Defence although it was obvious what the objection was going to be. The mistake, if it is a mistake, has been repeated twice. The appeal is allowed, and the plaintiff may have leave to amend, but in the circumstances I consider that the plaintiff should pay the costs of this appeal.

Appeal allowed.

Solicitors: *Battenberg & Talma; M. Ismail.*

ONG UP SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) August 19, 1960]

[Penang — Criminal Appeal No. 19 of 1960]

Gaming — Person found gaming in public place — Possession of cash and dice for playing "blangkas" — Charge with promoting gambling game — Common Gaming Houses Ordinance, 1953, ss.7(2) and 8(1).

Criminal Law and Procedure — Finger-prints of convicted person.

In this case acting on information received the police raided a place at night and there they saw a group of persons apparently gaming near a shed. On seeing the police the persons ran away, but the appellant was apprehended: a handkerchief containing $33.40 was found in his possession together with a single dice. The dice was one of a kind specially marked for the purpose of playing the game known as "blangkas". Other instruments for that game were also found at the scene.

On these facts the appellant was originally charged with being found gaming in a public place contrary to section 7(2) of the Ordinance. However, at the hearing of the case the prosecution produced a new charge charging him with the more serious offence of promoting a gambling game in a public place contrary to section 8(1). Upon that charge he was convicted and fined $500. He appealed.

Held: on the facts of the case there was no evidence to justify a conviction of promoting, as distinct from the lesser offence of gaming in a public place contrary to section 7(2). Conviction under section 8(1) set aside and one under section 7(2) substituted.

Observations on taking and recording finger-prints of convicted persons.

MAGISTRATE'S CRIMINAL APPEAL.

Mrs. P. T. Oon for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The appellant in this case was originally charged with being found gaming in a public place, contrary to the provisions of section 7(2) of the Common Gaming Houses Ordinance, 1953. At the hearing of the proceedings the prosecution produced a new charge charging him with the more serious offence of promoting a gambling game, to wit, blangkas in a public place, contrary to the provisions fo section 8(1) of the Ordinance. Upon that charge he was convicted and fined the sum of $500. He now appeals against both the conviction and sentence.

The facts of the case were that acting on information received the Police proceeded to a place on the Alma Estate at about 10 o'clock at night and there they saw a group of persons apparently gaming near a zinc shed on the estate. On seeing the Police the persons took to their heels and ran away. The appellant was apprehended and a handkerchief containing the sum of $33.40 was found in his possession, together with a single dice. According to the evidence given before the learned Magistrate, and accepted by him, the dice was of a kind specially marked for the purpose of playing the game known as blangkas. At the scene of the incident were also found other instruments such as a specially marked chart, which made it apparent to the Magistrate, upon the evidence heard by him, that the game of blangkas was, in fact, being played at the time the Police arrived on the scene.

On the sole evidence of the possession of the single dice which was found in the appellant's pocket and the money in his possession, the learned Magistrate convicted him of the charge preferred against him of promoting this game, contrary to the provisions of section 8(1). In doing so, he acted upon the presumption arising out of section 8(2) of the Ordinance, which provides that:—

> "Any person who brings to, or has in his possession at or near, a place where such an offence as aforesaid is committed any instruments or appliances for gaming, shall be presumed, until the contrary is proved, to have promoted the commission of an offence punishable under the last preceding Section."

On the wording of that section, as it stands, it is certainly not clear to me whether the possession of a single dice in the circumstances in which it was found upon the offender made him guilty, in the absence of any proof by him to the contrary, of the more serious offence of promoting the game, rather than of simply taking part in the game which would be an offence covered by section 7(2) of the Ordinance. The learned Magistrate disbelieved the appellant's story as to what he was doing at the scene of the incident, and there was undoubtedly evidence which certainly justified him in so disbelieving the appellant's story. But on the facts of the case I am not entirely satisfied that the evidence, and the presumption upon which the learned Magistrate acted, justified a conviction of promoting, as distinct from the lesser offence of gaming in a public place contrary to the provisions of section 7(2) of the Ordinance. I therefore set aside the

conviction under section 8(1) and substitute therefor a conviction of gaming in a public place under section 7(2) of the Ordinance.

The maximum penalty for promoting a gaming offence is a term of imprisonment not exceeding 12 months or a fine of $5,000 or both such imprisonment and fine. On the other hand the maximum penalty for gaming in a public place is a fine not exceeding $250. In the circumstances of this case I accordingly set aside the fine of $500 and substitute therefore a fine of $100.

I am told by Mrs. P. T. Oon, who appears for the appellant, that the Police have taken the finger-prints of the appellant. I do not know whether a conviction under section 8(1) empowers the Police to take the finger-prints, but having regard to the fact that the conviction has now been altered to the lesser offence under section 7(2), unless there is any lawful authority which empowers the Police, upon a conviction for an offence under section 7(2), to take and record the finger-prints of a convicted person, I direct that any finger-prints of the appellant which have been taken and recorded be destroyed by the Police.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*

LETCHMAN v. MOHAMED GHANY

[A. C. J. (Rigby J.) September 1, 1960]

[Penang — Civil Appeal No. 5 of 1960]

Contract — Agreement to sell land with houses thereon — Agreement to demolish and remove the houses — Agreement to pay rent on failure to deliver possession.

In this case the respondent on April 12, 1956 entered into an agreement with the appellant and his brother to sell a piece of land with two houses on it. Under the terms of the agreement the respondent was to demolish and remove the houses from the said land within 24 months from the date of completion of the purchase. In consideration of his doing so the appellant and his brother were to pay him $1,000 to defray the costs of removal and re-erection on another site. Under clause 2 of the agreement, such payment was only to be made if the houses were demolished and removed within the period of 24 months. Clause 3 provided: "On failure or refusal of the purchaser to give and deliver up peaceable possession of the said land and hereditament and demolish and remove the said houses erected thereon on or before the time hereinbefore specified the purchaser agrees to pay a monthly ground rent of dollars fifty ($50) of the said houses to the sub-purchasers." The respondent did not, in fact, demolish the houses and he still remained on the land.

The question for consideration was whether upon a construction of clause 3 of the agreement the rent of $50 a month was payable as from the commencement of the agreement, or whether it was to commence, if the respondent still remained in possession of the land, after the expiration of 24 months, being the period within which he was required to demolish and remove the two houses from the land.

Held: the proper construction to be placed on clause 3 of the agreement was that the rental only became payable if the respondent remained in possession after the period of 24 months had expired.

CIVIL APPEAL.

T. Subbiah for the appellant.

Jag-Jit Singh for the respondent.

Rigby J. (delivering oral judgment): This is an appeal from a decision of the learned President of the Sessions Court, Penang. The facts of the case are really perfectly simple and straightforward. On the 12th April, 1956, the respondent entered into an agreement with the appellant and his brother to sell them a piece of land with two houses on it Under the terms of the agreement the respondent was to demolish and remove the two houses from the land within 24 months from the date of completion of the purchase. In consideration of him doing so the appellant and his brother were to pay him the sum of $1,000 to defray the cost of removal and re-erection on another site. It is clear, however, from clause 2 of that agreement that such payment was only to be made if the houses were demolished and removed within the period of 24 months. Clause 3 of the agreement then provides:—

"3. On failure or refusal of the Purchaser to give and deliver up peaceable possession of the said land and hereditaments and demolish and remove the said houses erected thereon on or before the time hereinbefore specified the Purchaser agrees to pay a monthly ground rent of Dollars Fifty ($50) of the said houses to the sub-purchasers."

The appellant was, in fact, described in that agreement as a sub-purchaser by reason of the fact that the land and buildings thereon had been purchased by the respondent himself from another person on the 16th April, 1955, and under the terms of that earlier agreement the full purchase price was to have been paid by the respondent to the original vendor within a period of 12 months. It is apparent that in fact there was not a completion of the purchase price within that periods, so that this agreement was to all intents and purposes an assignment of the contract of purchase from the respondent to the appellant and his brother. The respondent did not, in fact, demolish the houses and he still remained on the land. In evidence he said that he wanted to demolish and remove the two houses within 24 months and he had asked the appellant and his brother on numerous occasions for the $1,000 and had been told by them that they had no money. This evidence, although it was denied by the appellant, was, in fact, admitted by the appellant's own brother, a witness called by the appellant himself. However, for whatever reason he may have stayed on the land, it seems to me immaterial on the facts of the case. The fact is that he still remained in possession after the two years had expired.

In July, 1958, the appellant's solicitors wrote to the respondent drawing his attention to the agreement and requesting him to demolish and remove the houses in accordance with the terms of the agreement. That letter contained the following paragraph — and I quote it:—

"As a result of your said undertaking and assurance to my client under the said agreement my client has allowed you to enjoy and live there free of ground rents